



Title searchers are investigators, of sorts: They pore over land title books to determine a property's back story.

Title insurance protects homeowners

BY MICHAEL CANFIELD
mcanfield@bizjournals.com
(716) 541-1654, @bj_mcanfield

Land title insurance has been on the rise in Western New York over the last 15 years, with several factors playing into why homeowners increasingly purchase such policies.

At its root, land title insurance protects people against claims on the property they own, as well as things such as easements and unresolved liens on a property. While it's unlikely that a claim will be made against a property, it's better to have protection just in case.

When Michael Piette, a member at Bond Schoeneck & King, was admitted to the bar in the early 1980s, attorneys usually determined whether a title had issues. Back then, homeowners often didn't get an owner's land title insurance policy. Lenders were just starting to require a policy on the lender's side.

"On the purchaser's side, you would examine the survey, you'd examine the title abstract, which is a history of the property," he said. "Back then,



Piette

it went back to the Holland Land Co., which was really the start of real estate records in New York. You would have a pretty complete record of that property."

Attorneys would feel comfortable telling their clients that they had a good title.

"We put our name on the line," Piette said.

But over time, lawyer malpractice insurance companies began to get nervous about attorneys making the call on titles.

"At one point they said, 'Don't give opinions.' But the case law basically said that if you don't give any opinion, you're basically giving a wholesale guarantee, so you better give an opinion," he said.

Fifteen years ago, a change in the title standard dictated that the abstracts, instead of going back to Holland Land, had to go back to 1920.

"If I'm looking at this from a risk point of view, what are my risks?" he said. "Now, with the change in the standard, the risk to a buyer and to the attorney who was giving an opinion was, 'Well, what happened before 1920?'"

At its base, land title insurance policies for owners protect against anything that may come up unexpectedly on a title, said Blaine Schwartz, a partner at Lippes Mathis Wexler Friedman. For example, if there was a use restriction put on your prop-

erty in 1910 but the title company does a 40-year search and misses it, it could end up in a claim against the property.

"The title company has to defend you," Schwartz said.

According to Piette, there are things that can be missed when the abstract only goes back to 1920.

Other factors tied to the increase in homeowners purchasing a policy are issues

that arise during a title search, said James Contino, a partner at Phillips Lytle. As more land title companies open, he said there's a greater possibility of mistakes.

"The talent pool is diluted," he said.

There could be errors in how a document is recorded, which could lead to other issues, Contino said.

Errors can be complicated to sort out, Piette said. For instance, if lot 23 is entered as lot 22, the mistake may be with the county clerk's office, not the original recorder of the document.

"If that's the case, the county has immu-



Schwartz

TITLE

FROM PAGE 1

nity on prosecution on something like that," he said. "You're just not going to succeed on a claim."

Mistakes have always been made, Piette said, but there seemed to be fewer years ago, most likely because of the slower pace of the process.

Molly Irvin-Peter, vice president and senior underwriter at Holland Land Title & Abstract Co., said technology initially played a part in how mistakes were made.

Title searching is a "specialized knowledge. ... It takes years to develop. Those searchers are valuable in that they have acquired years of experience and they're difficult to replace."

Christopher Willett
Holland Land Title & Abstract

"There could be indexing issues at the Erie County Clerk's Office by their own employees," she said. "Certainly that has become less of an issue the longer technology is on the scene. So much as a space in characters can cause a mis-indexed item or a missed item by a searcher. I've heard people say that the space in a name or a word or an entity is really the 27th letter of the alphabet. Special characters have to be taken into consideration. It's those types of things that may rise to the level of coverage under an owner's policy."

Other issues with searching may include names from immigrants that are difficult to determine what is the first and last name, said Irvin-Peter.

In Erie County, computerized records date to 1986, said Christopher Willett, vice president and branch counsel for Holland Land Title & Abstract. For the period between 1920 and 1986, the title searchers

are based at the county clerk's office, going through books. It's a time-consuming process, he said.

"Right now, because business is so good, if someone were to ask us to prepare a 1920 search, we would tell them four to five weeks," Willett said. "That's due to the volume. It may take someone a full day or two if they're down running books to ascertain whether or not a title is part of a larger tract. There's a science to it."

Down the line, he said the period of time may be shortened to coincide with the date the records are on the computer. That should speed up the process.

Title searching is a "specialized knowledge," according to Willett. If someone who conducts 40 or 60 year searches were to leave the company, they'd look for someone with a similar knowledge base.

"It takes years to develop," he said. "Those searchers are valuable in that they have acquired years of experience and they're difficult to replace."

In the Riverside area of Buffalo, for example, the company sees a lot of cases where Burmese refugees purchase or sell homes, Willett said. It can be difficult to search for their names.

"That's where a skilled searcher comes in," Irvin-Peter said. "They say, 'Maybe I should run this a different way.'"

Schwartz said that there are searchers with historical knowledge of the area and find things that a shorter search may not turn up.

"There's one searcher in particular who I think knows every property in Western New York," he said. "When I have a question, I give him a call. It's very specialized and, unfortunately, as the more experienced searchers retire, it becomes more and more difficult to get the historical knowledge or to take advantage of that historical knowledge."

Piette said he always advises his clients to get a policy.

"We'll almost not represent someone who doesn't purchase it," he said.

While cases involving land title issues aren't frequent, they do come up, Piette added.